



MINUTES OF THE CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK

For the meeting held on
Tuesday, August 25, 2009
980 9th Street, Conference Center, 2nd Floor
Sacramento, California 95814

Chairwoman Marjorie Berte called the meeting of the California Infrastructure and Economic Development Bank (I-Bank) Board to order at approximately 1:30 p.m.

1. Call To Order and Roll Call.

The following Board members were in attendance:

Marjorie Berte represented the Secretary of the Business, Transportation and Housing Agency.

Fred Aguiar, Secretary of the State and Consumer Services Agency.

Tom Sheehy, represented the Director of the Department of Finance.

Francisco Lujano represented the State Treasurer.

D. Everett Rice, Governor's appointee.

The following I-Bank staff members were in attendance:

Stanton C. Hazelroth, Roma Cristia-Plant, Molly Arnold, and Paula Connors.

2. Executive Director's Report.

Executive Director, Stan Hazelroth presented the Executive Director's Report and stated the following:

- I-Bank staff is in the process of identifying the various I-Bank administrative and program policies and procedures which include the criteria priorities and guidelines for the ISRF Program, and determining which policies and procedures are required and in need of updating. Staff is also examining projected workloads in an effort to finalize a calendar of projected policy updates in the near future.
- The Infrastructure State Revolving Fund (ISRF) Program staff are diligently researching appropriate methods to document the economic development and land use impacts of projects selected and financed by the ISRF Program.

Mr. Hazelroth referred to Ms. Arnold to present the litigation portion of the Executive Director's Report. Ms. Arnold reported the following:

- Hollywood Park Land Company, et al. v. Golden State Transportation Financing Corporation et al. (3d District Court of Appeal). Hollywood Park Land Co. brought an action asserting that the sale agreement for certain tribal gaming assets to a special purpose trust authorized by the I-Bank Board and the bonds and bond documents authorized by the special purpose trust are unconstitutional and invalid. The matter is pending in the Third District Court of Appeal. Briefing is completed and a hearing has been scheduled for October 19, 2009.
- Chapter 11 Bankruptcy filed by COPIA: The American Center for Wine, Food and the Arts (COPIA). The Bankruptcy Court has approved a disclosure statement to be sent to

creditors that describes a joint liquidation plan filed by COPIA and ACA Financial Guarantee Corporation (insurer of bonds issued by the I-Bank in 1999 and 2007; ACA). ACA and COPIA have filed a summary of ballots received from creditors with the court which reflects that the creditors in the voting creditor classes overwhelmingly approved the joint plan. Thus, the joint plan is eligible for confirmation by the court. Several creditors have filed objections to the ACA/COPIA joint plan. It is not yet clear whether these objections will delay the Court's confirmation of the joint plan.

- Copia Claims LLC, a California limited liability company on behalf of itself and all other similarly situated v. California Infrastructure and Economic Development Bank, et al. (US District Court). Plaintiff Copia Claims LLC (CCLLC) has served a complaint on the I-Bank and others in which it asserts that material misrepresentations were made to bondholders in relation to the issuance of bonds in 2007. Those 2007 bonds were issued to refund bonds issued by the I-Bank in 1999 that financed the construction of COPIA's Napa campus. CCLLC claims that the refunding of the 1999 bonds was technically flawed and has sought the court's approval to amend its complaint to comply with requirements of federal securities litigation procedure. The court has approved a schedule for the case proceedings which will delay the I-Bank's need to respond to the substance of the case until mid-October at the earliest.

Consent Items:

3. Approve minutes from the meeting held on July 28, 2009.

Chairwoman Berte called for questions or comments from the Board and the public. Hearing none, she entertained a motion to approve this consent item. Mr. Rice moved to approve the minutes and Mr. Sheehy seconded the motion. The minutes were unanimously approved.

Action Items:

4. Resolution No. 09-32 approving the sale, issuance and delivery of tax-exempt 501(c)(3) revenue bonds for Children's Institute, Inc., in an amount not to exceed \$15,000,000 to finance the construction and acquisition of economic development facilities in Los Angeles, California.

Ms. Connors presented a staff report describing the request to approve the sale of tax-exempt 501(c)(3) conduit revenue bonds for Children's Institute, Inc. (CII), in an amount not to exceed \$15,000,000 to finance the acquisition and renovation of property located in Los Angeles that will provide a blend of clinical, educational and community services in an area of extremely high need and low resources. She then discussed the bonds will be credit enhanced by loan insurance provided by Cal Mortgage. Ms. Connors further stated that the project is expected to employ 145 employees at the new facility, of which 30 will be newly created jobs.

Chairwoman Berte called for questions or comments from the Board or the public. In response to a question about the cost of the project and the use of the bond funds from Mr. Aguiar, Ms. Connors explained that CII has raised its equity portion as shown in the staff report for the initial \$16.7 million project, and that it intends to continue to obtain contributions and other pledges to construct additional project components eventually estimated to total \$25.6 million. Mr. Aguiar

then asked for clarification of the sources of repayment for the bonds. Ms. Connors explained that CII asserts that the bonds will be repaid with existing and new revenue sources, and that the new sources include contracts with the county to provide new services. She then added that the by Cal-Mortgage guarantee covers the full amount of the bonds. Ms. Connors clarified for Mr. Rice that Cal-Mortgage's rating is based on the State's credit rating. Ms. Connors then introduced CII's CFO, Mark Engel and Ms. Catherine Leek, bond counsel, and John Woodward from Merrill Lynch, underwriters for the bonds.

Chairwoman Berte called for additional questions or comments from the Board or the public. Hearing none, she entertained a motion to approve Resolution No. 09-32. Mr. Aguiar moved to approve the resolution and Mr. Sheehy seconded the motion. The Board unanimously approved the resolution.

5. Resolution No. 09-33 approving the sale, issuance and delivery of tax-exempt 501(c)(3) revenue bonds for Pueblo Serra Worship Holdings and JSerra Catholic High School in an amount not to exceed \$56,550,000 to refinance the cost of construction, furnishing, equipping and general development of certain real property improvements in San Juan Capistrano, California.

Ms. Connors presented a staff report describing the request to approve up to \$56,550,000 in 501(c)(3) conduit revenue bonds for Pueblo Serra Worship Holdings, which is affiliated with JSerra Catholic High School, to refund bonds and taxable loans issued by the Colorado Educational and Cultural Facilities Authority in 2006 for an estimated net present value savings of approximately \$7 million. Ms. Connors noted the original financing was used to construct school facilities in San Juan Capistrano, and that JSerra provides a comprehensive college preparatory high school co-educational program for approximately 1,000 students in grades 9-12. Ms. Connors also discussed the vetting by both the bond counsel and I-Bank counsel regarding the eligibility of tax-exempt conduit bond finding for a private religious school, and the conclusion that the applicant and the project are eligible for such financing. Ms. Connors introduced John Moody from JSerra High School and Sam Balisy, bond counsel.

Chairwoman Berte called for questions or comments from the Board or the public. In response to a query from Mr. Sheehy about the eligibility of tax-exempt financing for this project, Ms. Arnold briefly described a recent California Supreme Court case on the subject and confirmed that the operations at the school coupled with the structure of the proposed bonds create a transaction that is consistent with tests set forth by the court and eligible for tax-exempt conduit bond financing.

Chairwoman Berte asked for any further questions. Hearing none, she entertained a motion to approve Resolution No. 09-33. Mr. Sheehy moved to approve the resolution and Mr. Rice seconded the motion. The Board unanimously approved the resolution.

6. Resolution No. 09-34 approving the amendment of certain documents in order to provide additional security for the California Infrastructure and Economic Development Bank Variable Rate Revenue Bonds (Asian Art Museum Foundation of San Francisco), originally issued in 2005 in the amount of \$120,400,000 to finance an economic development project in the City and County of San Francisco.

Ms. Arnold explained the background of the original financing of the bonds issued for the financing of the construction and development of the new museum located at the Civic Center in downtown San Francisco, then explained that the purpose of the proposed amendments are to provide a substitution of an existing liquidity support and will provide additional credit support for the 2005 bonds.

Ms. Arnold provided a description of recent amendments to the staff report in response to a request from Chairwoman Berte, and clarified for Mr. Aguiar that the amendments to the staff report were prompted by late requested changes from the borrower. Ms. Arnold introduced Ms. Robyn Helmlinger, bond counsel for the transaction.

Chairwoman Berte called for any questions or comments from the Board or the public. Hearing none, she entertained a motion to approve Resolution No. 09-34. Mr. Sheehy moved to approve the resolution and Mr. Rice seconded the motion. The Board unanimously approved the resolution.

- 7. Resolution No. 09-35 appointing four firms: Hawkins, Delafield & Wood; Ronald E. Lee and Perry Israel; Orrick, Herrington & Sutcliffe; and Stradling Yocca Carlson & Rauth to serve as special counsel to the California Infrastructure and Economic Development Bank (I-Bank) and authorizing a legal services contract with each firm for a term of three years, in each case in an amount not to exceed \$75,000.**

Ms. Arnold briefed the Board on the need for and historical use of I-Bank special counsel, that existing special counsel contracts are scheduled to expire on September 30, 2009, that staff recently concluded a detailed request for qualification (RFQ) process, and that staff is proposing the selection of the following firms to enter into new special counsel contracts and is also proposing the following contract amounts:

- Hawkins, Delafield & Wood -- \$50,000;
- Orrick, Herrington & Sutcliffe -- \$75,000;
- Ronald E. Lee and Perry Israel -- \$75,000; and,
- Stradling Yocca Carlson & Rauth -- \$50,000.

Ms. Arnold discussed the legal background and the varying hourly rates of each recommended firm, with the highest hourly rate to be paid at \$575 to one of the proposed firms, the maximum allowed under the RFQ.

Chairwoman Berte called for questions or comments from the Board or the public. Mr. Aguiar raised several issues about the RFQ process including that the RFQ had a stated maximum cap on hourly fees, and that he believed that if the market rate is unknown, adding a cap to the RFQ would limit competition among proposals, and that he also thought it was inappropriate that the RFQ requested firms to submit a recommendation for an inflation factor to increase hourly rates during the contract term, although he acknowledged that staff was not recommending any hourly rate inflation factors for the proposed firms. Mr. Aguiar explained that his concerns also center around the current state of California's budget, and that pursuant to a recent Executive Order, many state contracts are currently being reduced and/or renegotiated to reduce costs. Ms. Arnold then confirmed for Mr. Aguiar that the Board could set an hourly rate cap for the selected firms

lower than the cap listed in the RFQ if it so desired, or alternatively that the RFQ could be reissued without a cap on the hourly rate and without a request for hourly rate inflation factors, and that this process would take approximately two to three months which would be past the expiration date of the current special contract terms. Mr. Arnold also confirmed for Mr. Aguiar that the current special counsel contracts do not contain any contract extension clauses, and that they would need to be amended by the Board to extend the contract term past the current expiration date.

Mr. Sheely expressed his agreement with Mr. Aguiar's concerns, and commented about the proposed seemingly high hourly rates proposed in the current difficult budgetary times.

Chairwoman Berte recommended that this agenda item be deferred to a future meeting and instructed staff to reissue the RFQ without any hourly rate cap or inflation proposals, to look into Executive Order S-09-09 with regard to new contracts, and to include on the next agenda the extension of the existing special counsel contracts for the Board's consideration.

8. Resolution No. 09-36 establishing a list of financial advisory firms eligible for appointment by the Executive Director as one or more of the financial advisors to the I-Bank in relation to one or more future pooled bond issuances undertaken by the I-Bank.

Ms. Connors presented a staff report recommending establishment of a list of pre-qualified financial advisory firms to assist the I-Bank with future pooled bond transactions. She explained to the Board that staff has been working with local governments and other jurisdictions interested in issuing Recovery Zone Economic Development Bonds and Recovery Zone Facility Bonds, which are new types of bonds created by the Federal economic stimulus act. She also discussed that fact that the creation of the pre-qualified financial advisory list will aid the swift issuance of bonds since these types of bonds must be issued by no later than the end of 2010.

Chairwoman Berte called for questions or comments from the Board or the public. Hearing none, she entertained a motion to approve Resolution No. 09-36. Mr. Sheehy moved to approve the resolution and Mr. Aguiar seconded the motion. The Board unanimously approved the resolution.

9. Resolution No. 09-37 establishing a list of legal counsel firms eligible for appointment by the Executive Director as bond counsel, or co-bond counsel ~~or disclosure counsel~~ for one or more future pooled bond issuances undertaken by the I-Bank.

This item was withdrawn.

10. Discussion of existing Preliminary Loan Guarantee granted to the Imperial Irrigation District (IID) on June 27, 2003, pursuant to Resolution Nos. 03-16 and 03-18, in the amount of funds set aside therefore, currently approximately \$24,000,000, and the status of the IID's request for approval of a final Loan Guarantee.

Mr. Hazelroth discussed the background and history of the Imperial Irrigation District (IID) Preliminary Loan Guarantee. He also explained that the Preliminary Loan Guarantee expires on December 31, 2009, and that staff estimates it will bring a Final Loan Guarantee request to the Board for consideration in November. Ms. Arnold commented that the I-Bank has provided the Board with Resolution Nos. 03-16 and 03-18 that constitute the Criteria for the Loan Guarantee Program and the I-Bank's prior issuance of a Preliminary Loan Guarantee to IID.

Mr. Aguiar expressed concern that the guarantee funds have been unused for almost six years. Mr. Lujano requested a staff report at the next Board meeting, and Mr. Aguiar requested that staff clarify why the issuance of the final guarantee has taken so long. Mr. Hazelroth confirmed that staff would provide a staff report discussing the history and background of the IID guarantee along with the requested information at the next board meeting.

Chairwoman Berte called for questions or comments from the Board or the public. Hearing none, Chairwoman Berte announced the meeting adjourned.

Other Non-Action Business.

Chairwoman Berte called for any other non-action business, there was none.

Public Comment.

Chairwoman Berte called for any public comment, there was none.

Adjournment.

Chairwomen Berte declared the meeting adjourned at approximately 2:55 p.m.